



Federal Communications Commission
Washington, D.C. 20554

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Small Entity Compliance Guide

Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules

CS Docket No. 98-120

Fifth Report and Order, FCC 12-59, Released June 12, 2012

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

**1-888-CALL-FCC (1-888-225-5322)
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Fax: 1-866-418-0232
fccinfo@fcc.gov**

I. DTV VIEWABILITY SUNSET PROCEEDING¹

A. Web Links to Key Documents

- Decision Document: The Fifth Report and Order, FCC 12-59 (rel. June 12, 2012), is available on the Commission's website at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-59A1.doc.

B. Objective of Proceeding

- The Commission initiated the proceeding in this docket in 1998 to address the responsibilities of cable television operators with respect to their carriage of digital broadcasters in light of significant changes to the broadcasting and cable television industries resulting from the nation's transition to broadcast digital television. In the 2007 *Third Report and Order* in this proceeding, the Commission adopted the viewability rule to ensure that cable subscribers would continue to be able to view must-carry broadcast stations after the broadcast DTV transition. The Commission, however, decided that the viewability rule would remain in force for three years after the date of the DTV transition,² subject to review by the Commission during the last year of the three-year period. The Commission explained that a three-year sunset "provides the Commission with the opportunity after the transition to review these rules in light of the potential cost and service disruption to consumers, and the state of technology and the marketplace." In the 2012 Fourth Further Notice of Proposed Rulemaking ("*Fourth FNPRM*") in this proceeding, the Commission initiated such a review and sought to determine whether it would be in the public interest to retain the viewability rule, given the current state of technology and the marketplace.

C. Background

- The Communications Act requires cable operators to ensure that commercial and non-commercial must-carry broadcast stations are "viewable" or "available" to all cable subscribers.³ This is referred to as the statutory viewability requirement. In preparation for the digital television transition in 2007, and in light of the state of technology and the marketplace at that time, the Commission adopted a rule giving cable operators two options to comply with the statutory requirement that they make must-carry television stations "viewable" to all subscribers. This rule provided cable operators of hybrid systems⁴ two options to comply with the statutory viewability requirement for must-carry broadcast television stations: (1) carry the digital signal in analog format to all analog cable subscribers (in addition to any digital version carried) to enable both digital and analog cable subscribers to view them, or (2) transition to an all-digital system and carry the signal only in digital format, provided that all subscribers have the necessary equipment to view the broadcast content. The Commission adopted this "viewability" rule to ensure that no analog cable subscribers would lose access to must-carry stations in the wake of the digital transition. Absent Commission action, the viewability rule was scheduled to sunset on June 12, 2012.

¹ This Guide updates the information contained in DA 08-1363 (rel. June 6, 2008).

² The full-power digital television transition was successfully completed on June 12, 2009, after Congress chose to delay it from the originally scheduled conclusion on February 17, 2009.

³ 47 U.S.C. § 534(b)(7), 535(h).

⁴ A "hybrid cable system" is defined below.

- The Fifth Report and Order allowed the viewability rule to sunset as scheduled, on June 12, 2012, with a transitional period of six months (to December 12, 2012) to allow consumers, cable operators and must-carry broadcasters to prepare for the widespread deployment of small, affordable set top boxes and to take other necessary steps resulting from changes in cable carriage. The Fifth Report and Order reinterpreted the statutory viewability requirement to permit cable operators to require the use of set-top equipment to view must-carry signals, provided that such equipment is both available and affordable (or provided at no cost). Therefore, until it completes its transition to all-digital service, a cable operator of a hybrid system may comply with the statutory viewability requirement by carrying a must-carry signal in a format that is capable of being viewed by analog customers either (1) without the use of additional equipment or (2) alternatively with equipment made available by the cable operator at no cost or at an affordable cost that does not substantially deter use of the equipment.
 - During the transition period, cable operators must continue to carry the must-carry stations in analog format to all analog subscribers in order to allow the cable operator to obtain an adequate supply of equipment, to notify consumers of the changes in service, and to allow consumers to make necessary arrangements.
 - Existing rules require cable operators to provide broadcasters and customers with 30 days advance notice of any planned carriage change. Operators have committed to providing 90 days advance notice in the record, so stations can provide notice to their viewers about their options for continued access to the station's programming.
- The decision to sunset the viewability rule was based on record evidence of the changes in technology and the market place, as well as statutory arguments made by parties to the proceeding.
 - The Commission concluded that under the statute, the term “viewable” can reasonably mean that a cable operator must make the broadcast signal available or accessible by any effective means - including offering the necessary equipment for free or for sale or lease at an affordable cost.
 - The Commission estimated there are around 12 million households that continue to receive analog cable service (down from 40 million households in 2007), and this number will continue to decline as cable operators continue to transition to all-digital systems.
 - The Commission found that small, limited-capability set-top boxes, called "Digital Transport Adapters" ("DTAs") can be now made available to subscribers at affordable cost. The Commission found that the range of charges reflected in the record for DTAs - i.e., free or a monthly fee of no more than \$2 - would satisfy the requirement for affordable equipment because the minimal additional cost, if any, is unlikely to discourage use of this equipment.
- Hybrid systems may choose to continue to operate as they have under the prior viewability rule – by providing an analog signal to analog subscribers and a digital signal to digital subscribers.
- Cable operators providing digital cable service⁵ must continue to carry local broadcast stations electing mandatory carriage, including in high definition (HD) format, and analog only cable operators must continue to carry local broadcast stations electing mandatory carriage in analog format.

⁵ Cable operators providing digital service may be either an “all-digital” system or a “hybrid” system. These types of cable systems are defined below.

D. Definitions

- A “**must-carry**” station is a television broadcast station that has elected mandatory carriage on cable systems located within the station's market. The “must-carry” provisions of the Communications Act entitle local television stations to have qualifying signals carried on cable systems in their local markets. Section 614(a) of the Communications Act provides that “[e]ach cable operator shall carry, on the cable system of that operator, the signals of local commercial television stations and qualified low power stations as provided in this section.” 47 U.S.C. § 534(a). Section 615(a), 47 U.S.C. § 535(a), imposes a similar requirement to carry “the signals” of qualifying non-commercial television stations.
- A “**hybrid**” cable system is a cable television system that offers both analog and digital cable service to its subscribers. By contrast, an “**analog-only**” system or “**all-digital**” system provide only analog or digital service, respectively.
- “**DTAs**” or “Digital Transport Adapters” are small, limited-capability set-top boxes that can provide cable consumers with access to the basic service tier and the expanded basic service tier. These devices are small enough to be attached to the back of a television set.

E. Key Compliance Requirements

- The Communications Act requires cable operators to ensure that commercial and non-commercial must-carry broadcast stations are “viewable” or “available” to all cable subscribers. This is referred to as the statutory viewability requirement. This statutory viewability requirement remains, even though the Commission’s 2007 viewability rule was allowed to expire. The revised interpretation of the statutory viewability requirement became effective on December 12, 2012.
- Therefore, effective December 12, 2012, until it completes its transition to all-digital service, a hybrid cable system operator has two options to comply with the statutory viewability requirement:
 1. It may carry the must-carry station in analog format to all analog cable subscribers (in addition to any digital version carried) to enable both digital and analog cable subscribers to view them; or
 2. It may carry the must-carry station only in digital format (instead of carrying the station in both a digital and an analog format), provided that all subscribers are offered the necessary equipment to view the station for free or for sale or lease at an affordable cost.
 - Equipment made available for free or for a monthly fee of no more than \$2 would satisfy the requirement for affordable equipment.
 - Under this option, hybrid cable system operators are expected to provide 90 days advance notice of this planned carriage change to broadcasters, so affected stations can provide notice to their viewers about their options for continued access to the station’s programming, and must provide broadcasters and customers with at least 30 days advance notice of this planned carriage change.
- Cable operators are reminded that the sunset of the viewability rule does not otherwise affect the must-carry requirements of Section 76.56 of the Commission’s rules.
 - Cable operators providing digital cable service must continue to carry local broadcast stations electing mandatory carriage, including in HD format when broadcast in such format, and cable operators providing only analog cable service (no digital service) must continue to carry local broadcast stations electing mandatory carriage in analog format.

- Operators of hybrid systems may choose to comply with the statutory viewability mandate by continuing to down-convert digital must-carry stations to analog format in addition to carrying those stations in digital standard definition (SD) and/or HD format if that best suits their individual business plans. Alternatively, after December 12, 2012, an operator of a hybrid system may choose to satisfy the viewability mandate by making must-carry signals available to analog subscribers by offering the necessary equipment for sale or lease, either for free or at an affordable cost that does not substantially deter use of the equipment.

F. Enforcement / Complaints

- The Commission allows a must-carry station to file a complaint against a cable operator, pursuant to Section 76.61 of our rules, if it believes that a cable operator has failed to comply with the statutory viewability requirement.⁶ In addition, the Commission will consider informal consumer complaints when evaluating compliance with the statutory viewability requirement. If the Commission were to receive a significant number of well-founded consumer complaints that an operator is not effectively making affordable set-top boxes available to customers in lieu of analog carriage of a channel, one of the possible remedies would be to require the operator to resume analog carriage of the channel.

II. EXEMPTION FROM HIGH DEFINITION (HD) CARRIAGE REQUIREMENTS FOR CERTAIN SMALL SYSTEMS⁷

A. Web Links to Key Documents

- Decision Documents:
 - The Fifth Report and Order, FCC 12-59 (rel. June 12, 2012), is available on the Commission's website at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-59A1.doc.
 - The Fourth Report and Order, FCC-08-193 (2008), is available on the Commission's website at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-193A1.doc.

B. Background

- The Communications Act requires that cable operators carry broadcast signals “without material degradation.” Accordingly, the Commission adopted a rule prohibiting material degradation of broadcast signals when carried by cable systems. The rule requires that any signal broadcast in high definition (HD) format be carried by cable operators in HD format (“HD carriage rule”).
- In response to concerns from small cable operators about cost and technical capacity, the Commission in the 2008 Fourth Report and Order in this proceeding exempted small cable systems (those with 2,500 or fewer subscribers that are not affiliated with a cable operator serving more than 10 percent of all MVPD subscribers, and those with an activated channel capacity of 552 MHz or less) for three years from the HD carriage rule. The exemption from the material degradation rules allows such systems to carry broadcast signals in standard definition (SD) digital and/or analog format, even if the signals are broadcast in HD, as long as all subscribers can receive and view the signal. Absent

⁶ 47 C.F.R. § 76.61.

⁷ This Guide updates the information contained in DA 09-1154 (rel. May 27, 2009).

Commission action, the HD carriage exemption was scheduled to sunset on June 12, 2012. The Fourth FNPRM considered whether to retain the HD carriage exemption or allow it to expire.

- The Fifth Report and Order concluded that the small-system HD carriage exemption continues to serve the public interest and extended the existing exemption for three more years. The Fifth Report and Order found that a significant number of small systems with financial or channel capacity constraints continue to rely on the HD carriage exemption and require additional time to come into compliance with the material degradation rules in a cost-effective way. Accordingly, the HD carriage exemption will sunset on June 12, 2015, unless the Commission takes action to extend it.

C. Compliance Requirements

- Reliance on the exemption established in the Report and Order is voluntary for operators of small systems who choose not to carry all local HD broadcast signals in HD. In order to qualify, a cable system must have 2,500 or fewer subscribers and not be affiliated with a cable operator serving more than 10% of all multichannel video programming distributor subscribers, or it must have an activated capacity of 552 MHz or less. A system meeting either or both of these criteria may rely on the exemption to the material degradation obligation to carry the HD version of a broadcast signal.⁸ All operators must continue to ensure that every subscriber to a cable system is able to view every must-carry signal, by down-converting it if necessary and carrying it in a format or formats that can be viewed by all subscribers.

⁸ 47 C.F.R. § 76.62(b).